

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

ELON MUSK

Defendants.

Civil Action No. 1:18-cv-8865-AJN-GWG

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

TESLA, INC.,

Defendants.

Civil Action No. 1:18-cv-8947

**DECLARATION OF JASON RABE IN SUPPORT OF THE
SECURITIES AND EXCHANGE COMMISSION’S MOTION
TO DISTRIBUTE FAIR FUND**

I, Jason Rabe, pursuant to 28 U.S.C. § 1746, declare and state as follows:

1. I am a Program Manager at Rust Consulting, Inc. (“Rust”), the Distribution Agent in this action. Pursuant to this Court’s Order from May 12, 2021 (Dkt. No. 55), Rust was appointed as Distribution Agent for the Fair Fund.

2. The Fair Fund and any interest or earnings, less Administrative Costs (the “Net Available Fair Fund”) will be distributed to Preliminary Claimants who submitted a timely and valid Claim Form (or “Claim”) pursuant to the Plan of Distribution (the “Plan”).

3. I submit this declaration (“Declaration”) in support of the Securities and Exchange Commission’s (the “Commission” or “SEC”) motion to distribute the Net Available Fair Fund to Eligible Claimants. I am over eighteen years of age and not a party to this action. This Declaration is based on my personal knowledge as well as information provided to me by my colleagues. If called to testify regarding the facts in this Declaration, I could do so competently.

POSTCARD PLAN NOTICE

4. Rust maintains a proprietary database with names and addresses of the largest and most common banks, brokers, and other nominees that it uses to notify record holders of class actions and Fair Funds. Rust’s proprietary database contains 4,036 names and addresses. On May 20, 2022, Rust caused the Postcard Plan Notice to be mailed to the 4,036 mailing records contained in the Rust record holder mailing database.

5. In response to the Postcard Plan Notice mailing, Rust received bulk requests from brokers and other nominees for 26,996 Postcard Plan Notices for them to forward to their customers. Rust also received an additional 67,102 names and addresses of Preliminary Claimants from brokerage firms, banks, institutions and other nominees, in the form of disks, emails, labels and lists, requesting that the Postcard Plan Notices be mailed to these individuals.

6. Rust leases and maintains a Post Office Box (P.O. Box 44, Minneapolis, MN 55440-0044) for the receipt of all undeliverable mail and written communications necessary to implement the Fair Fund.

7. Rust attempted to locate a new address for 1,047 Postcard Plan Notices that were returned as undeliverable without forwarding addresses by the United States Postal Service (“USPS”) through an information supplier to which Rust subscribes, and mailed a Postcard Plan Notice to 87 Preliminary Claimants where an updated mailing address was identified.

8. In total, Rust disseminated approximately 98,221 Postcard Plan Notices to Preliminary Claimants.

SUMMARY NOTICE

9. In accordance with the Plan, Rust caused the Summary Notice to be published in Investor’s Business Daily the week of May 30, 2022 and The Wall Street Journal on June 3, 2022. Rust also caused the Summary Notice to be transmitted over the PR Newswire on June 3, 2022.

TOLL-FREE TELEPHONE NUMBER AND WEBSITE

10. Rust established a toll-free telephone number (1-877-576-9981) with an Interactive Voice Response System (“IVR”) and live operators to assist Preliminary Claimants with questions about the Fair Fund. This system became operational on May 20, 2022. The IVR and recorded information are available 24 hours a day, 7 days a week. Live operators are available during regular business hours.

11. Rust also established and maintains a website (www.SECvTeslaFairFund.com) that enables Preliminary Claimants and other individuals to obtain information about the Fair Fund and to access important documents related to the Fair Fund. The website allows Preliminary Claimants to view answers to frequently asked questions and contains a list of important dates, including the deadline to file their Claim Form. The Website also contains “links” to the Postcard Plan Notice, Plan Notice, Claim Form, Plan, Plan of Allocation, and Order Approving the Plan. The “links”

permit any person with internet access to view and download these documents at their convenience. Preliminary Claimants could also submit their Claim Form online through the website.

12. An email address (info@SECvTeslaFairFund) was also setup to provide Preliminary Claimants with another means to contact the Distribution Agent with any questions or to find out more information about the Fair Fund.

CLAIMS PROCESS

13. The Postcard Plan Notice advised Preliminary Claimants that if they purchased or acquired Tesla common stock, listed on a U.S. Exchange and registered with the Commission and traded under the symbol TSLA during the Relevant Period,¹ they may be eligible for a distribution from the Fair Fund. To be considered, Preliminary Claimants were required to submit a completed Claim Form with necessary documentation, and return it to the Distribution Agent postmarked no later than September 17, 2022. Claim Forms could also be submitted on the Fair Fund's website no later than 11:59 p.m. EDT on September 17, 2022.²

14. Claim Status Notices were sent to all Potential Claimants that submitted a Claim Form beginning on December 16, 2022. These notices advised the Potential Claimant of the Distribution Agent's determination of the eligibility of their Claim Form (eligible, partially or wholly deficient, or ineligible) and their calculated Recognized Loss.

15. For Claim Forms found to be deficient, the Claim Status Notice provided the reason(s) for the deficiency, notifying the Potential Claimant of the opportunity to cure such

¹ Relevant Period is defined in the Plan of Allocation as "between 12:48:16 p.m. EDT on August 7, 2018 and 4:00 p.m. EDT August 8, 2018."

² In consultation with the SEC, the filing deadline was extended for another week, until September 24, 2022.

deficiency, and provided instructions regarding further necessary actions. In the event the Claim was denied, the Claim Status Notice stated the reason(s) for such denial and notified the Potential Claimant of their opportunity to request reconsideration of their Claim. The Claim Status Notice provided forty-five (45) days from the date of the notice to respond.

16. Rust contacted the banks, brokers and other nominees (“Nominees”) who submitted claim/transactional data electronically to confirm their submissions and notify the filer of their Claim(s) statuses. Rust provided all Nominees who submitted electronically filed Claims, a Transaction Report in Microsoft Excel format, listing the individual transactions and/or entire Claims that were found to be deficient or ineligible so that the Nominee had the opportunity to correct the deficient condition or request reconsideration of the Claim. The Transaction Report also identified the Claims that were in good standing and provided the calculated Recognized Loss for each Claim listed.

17. Following the mailing of the Claim Status Notices, Rust received and processed responses to documentation and information requests, as well as other correspondence relating to the Claims.

18. Pursuant to paragraph 66 of the Plan, to maintain a high level of quality control, Rust retained an independent third-party firm to perform a set of agreed upon procedures, review a statistically significant sample of the Claims to ensure accurate and comprehensive application of the Plan of Allocation. The final report was sent to the Commission on August 1, 2023.

19. Rust received and processed 6,396 Claims Forms.³ The Claims were submitted by Preliminary Claimants either through the website (416), by submitting a hard-copy Claim Form

³ There must be a final cut-off date after which no additional Claims or responses to Claim Status Notices may be

(318), or electronically (5,662) using a filing template provided by the Distribution Agent. Of the 6,396 Claim Forms received, Rust recommended that 3,715 of these Claims share in the distribution of the Fair Fund.

20. Prior to the disbursement of the Net Available Fair Fund, the Distribution Agent will establish an escrow account with Huntington National Bank, and an associated (linked) checking account. The funds transferred to the escrow account shall be invested and reinvested pursuant to the Plan in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. As checks are presented each day, only enough funds to cover the presented checks will be moved from the escrow account to the associated checking account.

21. The balance of the Net Available Fair Fund, after taking into account a reserve for Administrative Costs,⁴ is \$41,532,229.55. Pursuant to paragraph 71 of the Plan, Rust provided a Payee List to the Commission of all Eligible Claimants and their calculated Recognized Loss and the amount of their Distribution Payment. The finalized Distribution Payments to the 3,350 Eligible Claimants totaled \$41,532,229.44.⁵ Eligible Claimants will receive approximately 51.7% of their calculated Recognized Loss amount.

22. The Minimum Distribution Amount per the Plan of Allocation is \$10.00. If an Eligible Claimant's distribution amount is less than this amount, the Eligible Claimant will be deemed ineligible to receive a Distribution Payment. A total of 365 Eligible Claimants were

accepted. This is done so that there may be a proportional distribution of the Net Available Fair Fund. As a result, a cut-off date of November 29, 2022 was established.

⁴ Reserve includes \$325,000.00 for future tax obligations and fees and expenses of the Tax Administrator (\$37,928.92) and the Distribution Agent (\$182,494.85). The reserve also includes an additional amount of \$227,100.12 to cover the unpaid Distribution Agent's administrative costs incurred through June 30, 2023.

⁵ An amount of \$0.11 was not allocated due to rounding.

excluded from the prepared Payee List as a result and shall be sent a separate notification regarding their ineligibility.

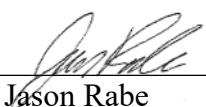
23. As required by federal law, the approved list of Eligible Claimants was compared to the OFAC (Office of Foreign Assets Control) Sanctions Lists for any potential matches. There were no Claims identified during this OFAC screening process that would require further information from Eligible Claimants or require removal from the Payee List.

24. All distribution payments shall be accompanied by a statement characterizing the distribution, the tax treatment of the distribution is the responsibility of each Payee and the Payee should consult his, her, or its tax advisor for advice regarding the tax treatment of the distribution, checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued, and contact information for the Distribution Agent for questions regarding the Distribution Payment.

25. A copy of the Payee List is provided to Commission with this Declaration along with a reasonable assurances letter. As set forth in the Payee List and reasonable assurances letter, the Net Available Fair Fund amount shall be disbursed to the 3,350 Eligible Claimants; the Payee List was compiled in accordance with the approved Plan; it provides all currently known contact information necessary to make a disbursement to each Eligible Claimant listed; and all of the information on the Payee List provided to the Commission is verified as complete and accurate.

26. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21st day of August 2023.



Jason Rabe
Program Manager
Rust Consulting, Inc.